

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:10CR259
)	
Plaintiff,)	
)	
vs.)	TENTATIVE FINDINGS
)	
FRANCISCO HEREDIA-BARRAZA,)	
)	
Defendant.)	

The Court has received the Revised Presentence Investigation Report (“PSR”) and the parties’ objections thereto (Filing Nos. 74, 75). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

Both parties object to the drug quantity and base offense level in the PSR, because they exceed the drug quantity of at least 50 but less than 200 grams methamphetamine and base offense level 26 agreed to in the plea agreement. The Court intends to honor the plea agreement, and the objections to ¶ 21 are granted. The base level is 26.

The Defendant argues he is entitled to a 4-level reduction under U.S.S.G. 3B1.2 for a minimal role. The objection will be heard at sentencing, and the Defendant has the burden by a preponderance of the evidence.

The Defendant’s argument for a sentence of no more than 24 months will be heard at sentencing.

IT IS ORDERED:

1. The parties’ objections to ¶ 21 (drug quantity; base offense level) are granted;

2. The Defendant's objection to the lack of a minimal role will be heard at sentencing;

3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 27th day of June, 2011.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge